

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

UNITED STATES OF AMERICA

VS.

STEVE KELBY SAMPLES

Defendant.

§  
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§  
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§  
§

NO. 3-08-CR-0012-B

NO. 3-11-CV-1066-B

**RECOMMENDATION REGARDING MOTION TO PROCEED**  
**IN FORMA PAUPERIS ON APPEAL**

A Notice of Appeal has been filed in the above captioned action in which:

- ( ) the District Court has entered a final order in a habeas corpus proceeding brought pursuant to 28 U.S.C. § 2254.  
(X) the District Court has entered a final order in a proceeding pursuant to 28 U.S.C. § 2255.

Pursuant to Federal Rule of Appellate Procedure 22(b) and 28 U.S.C. § 2253(c), the undersigned Magistrate Judge recommends as follows:

**IFP STATUS:**

- (X) the party appealing should be GRANTED leave to proceed *in forma pauperis*.  
( ) the party appealing is proceeding *in forma pauperis*.  
( ) the party appealing should be DENIED leave to proceed *in forma pauperis* for the following reason(s):  
( ) the Court recommends that the District Court certify, pursuant to Fed. R. App. P. 24(a) and 28 U.S.C. § 1915(a)(3), that the appeal is not taken in good faith;  
( ) the person appealing is not a pauper because he has paid the appellate filing fee;  
( ) the person appealing has not complied with the requirements of Rule 24 of the Federal Rules of Appellate Procedure and/or 28 U.S.C. § 1915(a)(1) as ordered by the Court. (See Notice of Deficiency and Order entered on \_\_\_\_\_).

SIGNED this 6<sup>th</sup> day of February, 2012.

  
JEFF KAPLAN  
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
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**ORDER OF THE COURT ON THE FOREGOING RECOMMENDATION**

Considering the record in this case and the above recommendation, and pursuant to Federal Rule of Appellate Procedure 22(b) and 28 U.S.C. § 2253(c), the Court hereby finds and orders:

**IFP STATUS:**

(X) the party appealing is GRANTED *in forma pauperis* status on appeal.

( ) the party appealing is proceeding *in forma pauperis*.

( ) the party appealing is DENIED *in forma pauperis* status on appeal  
for the following reasons:

( ) the Court certifies, pursuant to Fed. R. App. P. 24(a) and 28 U.S.C. § 1915 (a)(3), that the appeal is not taken in good faith. In support of this finding, the Court adopts and incorporates by reference the Magistrate Judge's Findings and Recommendation entered in this case on \_\_\_\_\_. Based upon the Magistrate Judge's findings, this Court finds that the appeal presents no legal points of arguable merit and is therefore frivolous. *See Harkins v. Roberts*, 935 F. Supp. 871, 873 (S. D. Miss. 1996) (citing *Howard v. King*, 707 F. 2d 215, 219-20 (5<sup>th</sup> Cir. 1983)).

( ) the person appealing is not a pauper;

( ) the person appealing has not complied with the requirements of Rule 24 of the Federal Rules of Appellate Procedure and /or 28 U.S.C. § 1915(a)(1) as ordered by the Court. (See Notice of Deficiency and Order entered on \_\_\_\_\_).

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
JANE J. BOYLE  
UNITED STATES DISTRICT JUDGE